IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1462/06
(Parminderjeet Singh Gill & Ors. Vs. State of Rajasthan)

Date of Order : 11/12/2006

PRESENT
HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.S.Sandhu for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners seek quashing of complaint qua them being Complaint Case No.99/95 pending in the Court of Chief Judicial Magistrate, Jodhpur (for short 'the trial court' hereinafter) on the ground that the requirement of Section 141 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) have not been fulfilled in the complaint filed by the Drug Inspector.

I have carefully gone through the complaint filed by the Drug Inspector.

The complaint has been filed against the firm M/s Mahesh Medical Store, of which the non-petitioners No.1 and 2 in the complaint are partners, however, they are not the petitioner herein, and against firm M/s. Ajeet Chemicals, of which the non-petitioner No.4 in the complaint is the Proprietor, as also against

M/s. Bio-medica International, of which the non-petitioner No.5 Smt. Simarjeet Kaur Gill, non-petitioner No.6 S. Parminder Jeetsingh Gill, non-petitioner No.7 S. Malkiyat Singh and non-petitioner No.8 Tarlochan Singh, in the complaint are the partners and Manufacturing Chemist as also Analyst. The non-petitioner No.9 in the complaint is the firm M/s. Bio Medica International through Partner Smt. Parminder Jeetsingh Gill. The instant petition has been filed by petitioners who are non-petitioners No.6,7 and 8 in the complaint.

So far as petitioner No.3 Trilochan Singh is concerned, he is non-petitioner No.8 in the complaint and is analyst, therefore, prima-facie he is in-charge of and is responsible for the conduct of business of the company.

So far as petitioners No. 1 and 2 are concerned, they have been impleaded as partners of the firm M/s. Bio-medica International, however, in whole of the complaint, nothing has been alleged against them as to whether they were incharge of and were responsible for the conduct of business of the company.

In S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another (2005) 8 SCC 89 while answering the questions posed in the reference, the Hon'ble Supreme Court held that the answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make

the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

Therefore, keeping in view the decision of Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr. (supra), so far as petitioners No. 1 and 2 are concerned, there is no averment in the complaint that they were incharge of and were responsible for the conduct of business of the company and to the extent of petitioners No.1 and 2 the petition deserves to be allowed. However, so far as petitioner No.3 is concerned, there being sufficient averment against him fulfilling the requirement of Section 141 of the Act and therefore, the proceeding against him cannot be said to be bad in law.

In the result, the criminal misc. petition is partly allowed. The proceeding against petitioners No. 1 Parminderjeet Singh Gill and No.2 Malkiat Singh in criminal complaint case No.99/95 is quashed. The petition filed by petitioner No.3 Trilochan Singh is dismissed.

(H.R.PANWAR),J.

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